



Internet Email: opd@opd.wa.gov

**WASHINGTON STATE
OFFICE OF PUBLIC DEFENSE**

(360) 586-3164
FAX (360) 586-8165

Washington State Office of Public Defense Comments on the Parents Representation Program and Earlier Permanency

by Joanne Moore, Director

A court administrator once explained that before the Parents Representation Program (PRP) was implemented in his county, under-resourced parents' attorneys were like a flat tire on a car. Even though the other three tires were adequately resourced—the State social workers and AGs, the CASAs, and the Court—the vehicle couldn't move forward properly until the parents' attorney tire was fixed.

A recent study of the Office of Public Defense (OPD) Parents Representation Program (PRP) by Mark E. Courtney, PhD., and Jennifer L. Hook, PhD, at Partners for Our Children (POC) at the University of Washington analyzed the child welfare files of 12,104 children who entered out-of-home care from 2004 to 2007. POC was interested in the Parents Representation Program's timing impacts on children's exits to reunification, adoption or guardianships. By tracking these cases through the end of 2008, POC came to the following conclusions, among others:

- *Of children achieving permanency during the study, 68% reunified, 26% were adopted, and 6% exited to guardianship.*
- *Based on a projection of statewide implementation on a cohort of children entering care in 2001, implementation of the PRP program accelerated the timing of reunifications by about one month, and the timing of adoptions and guardianships by about one year.¹*

The timing impacts of the Parents Representation Program may seem unexpected. However, as OPD has often observed, the poor working conditions of many previous parents' defense attorneys not only were detrimental to their parent client's interests, but also caused delays in case processing.

With the development of OPD's Parents Representation Program, new practice standards were created to foster improved attorney practices that would better serve parent clients (including enabling them to meet federal Adoption and Safe Families Act and Washington case timeline demands). In addition, the PRP standards implement practices that contribute to more effective and efficient case processing. This paper discusses selected practice standards that OPD believes directly contribute to the earlier permanency found in the POC study.

Background. In 1999, at the request of the Washington Legislature, the Office of Public Defense developed a proposal to address the costs of legal representation and expenses in dependency and terminations. The Legislature directed that "the proposal shall recommend

strategies to ensure that an equitable method of paying for indigent defense costs in dependency and termination proceedings is established.”

OPD observed court proceedings; interviewed judges, commissioners, attorneys, and CASA volunteers; surveyed parents’ defense attorneys and juvenile court judges and court administrators; collected information about defense attorney total budgets and pay rates in the various counties; and obtained data as to the Attorney General’s Office (AGO) budget for dependency and termination representation. OPD’s report found that parent attorneys’ representations were funded by the counties at substantially less than half the level of state funding for AG representations. Problems in the system included:

- excessive caseloads and low pay for parent’s defense attorneys;
- frequent continuance of hearings and other case delays (individual parents were described as “deeply disappointed” when their cases were put off for several weeks or months);
- the lack of case supports for parent’s defenses, such as independent experts when needed or social workers to investigate the facts;
- the lack of time for parent’s defense attorneys for proper preparation of cases, resulting in their greatly diminished ability to bring issues forward in the court;
- the lack of supervision or oversight for many parent’s defense attorneys; and
- the fact that “among other problems, cases with delayed closure require many extra hours of defense attorney time.”

OPD, *Costs of Defense and Children’s Representation in Dependency and Termination Cases*, 1999ⁱⁱ

In 1998, the Attorney General’s Office had reported in the *1998 Guardianship and Termination Audit* the shortage of parents’ defense attorneys in these cases, causing consequent barriers to effective case processing due to their excessive continuance requests. The deficiencies in the system for providing parents’ defense attorneys were so marked that the report recommended that “(t)he AGO should be willing to support the addition of more defense attorneys where appropriate.”

In 2000, the Legislature appropriated funds for OPD implementation of a pilot program for improved representation for parents in Benton-Franklin and Pierce juvenile courts. The pilot program was favorably evaluated several times, finding increases in the number of reunifications. As part of the courts’ Justice in Jeopardy initiative, in 2005, 2006, and 2007 the Legislature expanded the Parents Representation Program to 25 counties, equaling two-thirds of the state. In 2010, OPD reviewed program case outcomes, as well as non-program case outcomes, under consultation and research audit of the Washington State Center for Court Research. (All PRP cases included in 2010 study were filed after implementation of the program; in other words, cases that were ongoing when the program was implemented were not included, as they did not receive the full program benefits of the program in their earlier stages.) The 2010 study showed a 39% rate of increase in the total number of families reunified within about 2.5 years after the PRP was implemented, as well as an increase in earlier case resolution.ⁱⁱⁱ

Why would better parents’ attorneys have such a big impact on timeliness, as found in the POC evaluation? As noted above, the 2011 POC study found that after the Parents

Representation Program was implemented in the 25 counties, cases were able to be resolved in a more timely way. OPD believes that the PRP practice model not only serves parents' interests better, but also allows for more effective and efficient case processing.

The PRP practice standards^{iv} and goals directly address the necessity of avoiding delays in dependency and termination cases. With implementation of the program:

- PRP attorneys are to communicate regularly with their parent clients and act as "counselors at law" throughout the case, in conformance with attorney ethics requirements. Parent clients must be able to fully confide to their attorney the facts and issues involved in their case and be able to understand what is going on in the case, understand case timelines and when specific case requirements (such as services) should be completed, and be able to make informed choices as to how their case will proceed. When parent clients are missing, PRP attorneys are to take diligent steps to locate and communicate with the clients and work with them to decide representation strategies;
- PRP attorneys are to encourage parent clients, in the overwhelming majority of cases, to engage in services early in the case, unless doing so is specifically not part of the representation plan;
- PRP attorneys are to enforce parent clients' ability to access mandated services in a timely way throughout the case by assuring that court orders specify each party's duties and responsibilities regarding services referrals, payment for services, transportation issues and a realistic timeline for commencing and completing services. PRP attorneys are to enforce the availability of mandated services by following up with the Department of Social and Health Services if the parent client is unable to access services, and if necessary, filing enforcement motions with the court;
- PRP attorneys are to advocate for parent-child visitation and maintenance of the parent-child relationship by ensuring that visitation plans provide for the maximum visitation possible and promptly seeking increased visitation as the case progresses, and by seeking make-up visits when a child has not been available for a visit or when the client, for good cause, could not attend a scheduled visit;
- PRP attorneys are to prepare their cases for court in a timely way, including reviewing the department's case file and obtaining all necessary documents early in the case by informal or formal means, by obtaining necessary authorizations for releases of information, by timely filing pleadings, motions, and briefs, when appropriate, by engaging in settlement negotiations with the client's permission, by thoroughly preparing for hearings, and generally by avoiding continuances except when necessary for substantive reasons;
- PRP attorneys are to follow the parent client's instructions as to what case outcome to pursue. They are to act in their counselor-at-law capacity to thoroughly discuss the possible case outcomes with the client, and the actions necessary for achievement of those outcomes. If the client wishes to reunify, they are to take all steps necessary to promote reunification. If, as the case progresses, the client feels unable to raise the child

on a day to day basis, the PRP attorney is to advise the client as to adoptions with contact and/or guardianship possibilities, and work to negotiate those outcomes. If directed by the client, and/or if agreement is not possible, the PRP attorney is to competently represent the client in court, following the timely and adequate case preparation steps outlined above.

In other words, allowing a parent's case to languish does not comport with the PRP practice standards. Each of the practice standards cited above leads to improved timely case processing. Ever mindful of federal and state timelines, PRP attorneys strive to ensure that each stage of the case goes forward. In addition, parents' attorneys' adherence to these standards imposes accountability for following case plans not only on the parents' side of the case, but on all the parties.

Some of the timeliness impacts of implementation of the PRP were identified by various dependency and termination stakeholders in the system in a 2005 evaluation of the OPD pilot program^v:

Court Officers:

- *"Weak links in a system results in failure. Parents' representation (pre-program) was that weak link."*
- *"The quality of the information from (parents') attorneys has improved, and this is important for service planning and decision making."*
- *"No real change (in types of services provided) but better discussions among parties regarding service needs and ensuring parents get the appropriate services early on."*
- *"Terminations are down because of all the work being done at the front end. If it does go to termination, court time is reduced because cases are better prepared at this point due to all the earlier work."*
- *"Attorneys are now able to review all the information within the first month—(leading to) fewer contested fact findings hearings...(and more) agreements because attorneys have had time to work with their clients."*
- *"...(the program) makes parties sit down (to talk), it works."*

PRP Attorneys:

- *"(Prior to the program) we had too many cases, thus there was not time to visit with the client, interview witnesses, or conduct evaluations."*
- *"We usually receive the petition with a phone number to contact the client. This did not...happen prior to the project. So this helps establish rapport with the client, and puts the client in a more informed place...it's much easier to explain how it works in the office than at court."*
- *"Prior to this pilot there was no discovery prior to fact finding. So for the clients...they might have had a different understanding of the allegations."*
- *"We are now able to be more proactive in our representation since we do not have as many conflicting demands...we are able to focus our energies."*

Children's Administration Social Workers and AGs:

- *"Parents are more willing to follow through with services and (PRP pilot) program social workers may be the resource and reason."*

- *“...program attorneys are present and more prepared at settlement hearings now.”*
- *“If time was not available to prepare for the hearing the (parents’ attorneys) used to attack the CA social worker (as their defense.) Now the true underlining issues can be addressed and energy is not being misplaced.”*
- *“Historically, (parents attorneys were) regarded as unresponsive...but now (they are) responsive; thus the system works better all around because others must also be prepared.”*

There have been lots of changes in the child welfare system. Couldn’t the improved case timing reported in the POC study have happened due to other policy changes rather than the PRP? One might speculate that other state policy factors rather than the PRP caused the study’s findings. But the evaluation was designed to test for that proposition. That’s the reason that the study compares thousands of cases in the 14 non-PRP counties to thousands of cases in the PRP counties, and it is why the researchers carefully tracked the exact implementation date of the PRP in each of the 25 counties and the resulting changes in each of them. Statewide policy changes happened in all of the counties in the state—both the 14 non-PRP counties and the 25 PRP counties—in the late 2000s. But the earlier permanency results were more likely to occur in the 25 PRP counties, after the sequential implementation of the program in those counties.

POC has noted that...”we believe that our ability to take advantage of discontinuities in county-level court practices over a several-year period, owing to the staggered implementation of the PRP, provides a very strong quasi-experimental test of the PRP. Our analysis of child welfare and court data in Washington and our conversations with child welfare system and court personnel in the state did not uncover any evidence that the timing of PRP implementation in counties coincided with other changes at the county level in child welfare practice, court practice, or the characteristics of children and families served.”^{vi}

OPD is glad to report that the PRP isn’t the only success story where public defense improvements have caused holistic impacts. When attorney representation of indigent clients is improved by the implementation of adequate resources and practice standards, the whole case processing system can gather speed. When OPD recently piloted adequate public defense attorney standards in two adult criminal courts, one of the outcomes was the acceleration of the courts’ ability to resolve cases sooner. Thirty-five percent more cases were resolved within six months after implementation of the public defense pilot program in Thurston District Court, and thirty-one percent more cases were resolved within six months after implementation of the pilot program in Bellingham Municipal Court.^{vii} As reported in OPD’s yearly status reports on public defense, similar striking court-wide improvements have resulted when other courts have improved the representation of indigent litigants.^{viii}

The court administrator who set out the flat tire analogy was right on point. If parents’ attorneys, who are one of the necessary parties in the court system, can’t keep up, the case resolution process is handicapped. When they are brought up to speed with adequate resources, standards, and oversight, many of the elements that hampered the decision-making process can fall into place and earlier case resolution can be achieved.

ⁱ Courtney, M.D. and Hook, J.L. (2011). *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for children in Foster Care*, Seattle: Partners for Our children at the University of Washington, at 4, available at <http://www.partnersforourchildren.org/knowledge-center>. The evaluation notes that “reunifications generally happen much more quickly than adoptions or guardianships, so there is less room to decrease days in care”, at 4.

ⁱⁱ Washington State Office of Public Defense (1991), *Costs of Defense and Children's Representation in Dependency and Termination Cases*, Olympia, WA: Author, available at <http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/1999%20Cost%20of%20Defense%20Dep%20&%20Ter.pdf>

ⁱⁱⁱ http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/100325_ReunificationOutcomes.pdf

^{iv} Washington State Office of Public Defense Parent's Representation Program Standards of Representation, (2009), available at <http://www.opd.wa.gov/ParentsRep/090401%20Program%20Attorney%20Standards.pdf>

^v Harper, C.J., Brennan, K., and Szolnoki, J. (2005). *Dependency and Termination Parents Representation Program Evaluation Report*, Northwest Institute for Children and Families, available at <http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/2005%20Evaluation%20Report.pdf>

^v Courtney, M.D. and Hook, J.L. (2011). *Evaluation of the Impact of Enhanced Parental Legal Representation on the Timing of Permanency Outcomes for children in Foster Care*, Seattle: Partners for Our children at the University of Washington, at 4, available at <http://www.partnersforourchildren.org/knowledge-center>. The evaluation notes that “reunifications generally happen much more quickly than adoptions or guardianships, so there is less room to decrease days in care”, at 4.

^v Washington State Office of Public Defense (1991), *Costs of Defense and Children's Representation in Dependency and Termination Cases*, Olympia, WA: Author, available at <http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/1999%20Cost%20of%20Defense%20Dep%20&%20Ter.pdf>

^v Washington State Office of Public Defense Parent's Representation Program Standards of Representation, (2009), available at <http://www.opd.wa.gov/ParentsRep/090401%20Program%20Attorney%20Standards.pdf>

^v Harper, C.J., Brennan, K., and Szolnoki, J. (2005). *Dependency and Termination Parents Representation Program Evaluation Report*, Northwest Institute for Children and Families, available at <http://www.opd.wa.gov/Reports/Dependency%20&%20Termination%20Reports/2005%20Evaluation%20Report.pdf>

^{vi} Courtney, M.D. and Hook, J.L. (2011), *supra*, at 6.

^{vii} Luchansky, Bill (2009 and 2010), *The public Defense Pilot Projects*, Looking Glass Analytics, Olympia, WA: Author, available at http://www.opd.wa.gov/Reports/TrialLevelServices/1006_PilotProject.pdf

^{viii} Available at <http://www.opd.wa.gov/Reports/T-Reports.htm>